

*:ITEM NO.101

COURT NO.7

SECTION XIA

Part-Heard

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2773 OF 2002

C.KARUNKARAN (D)BY LRS.
)

Appellant(s)

VERSUS

T.MEENAKSHI

Respondent(s)

(with office report)

Date: 06/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Mr. B.V.Deepak, Adv.

Mr. Dilip Pillai, Adv.for

M/s T.T.K.Deepak & Co.

For Respondent(s)

Mr. K.Rajeev, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeal is dismissed in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2773 OF 2002

C.Karunakaran (D) By Lrs.

..Appellant(s)

VERSUS

T.Meenakshi

..Respondent(s)

O R D E R

Tenant is in appeal. Respondent-landlady filed an eviction petition seeking eviction of the tenant-appellant (for short 'the appellant') under Section 11(2)(a)(b) and Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act', on the grounds of arrears of rent and for bona fide need for

occupation by her elder son for conducting stationery business in the Court of Rent Controller, Kannur. Tenant-appellant in his written statement contested the claim of the appellant and sought protection of second proviso to Section 11(3) of the Act which provides that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

Rent Controller dismissed the eviction petition. The appeal filed by the respondent-landlady was also dismissed.

Aggrieved against the order passed by the Rent Controller and the first appellate Court, the respondent-landlady filed Civil Revision Petition No. 1338 of 1992 in the High Court of Kerala at Ernakulam. The High Court by its impugned judgment set aside the judgments and orders passed by the courts below and accepted the plea of the landlady for eviction on the ground of bona fide need.

Rent Controller as well as the first appellate Court after analysing the evidence of PW1 dismissed the need under Section 11(3) of the Act. It was held that since the respondent and her entire family were living in Bombay for the last 34 years, one cannot hope and visualise that the landlady's son will come to Chirakkal in Kannur and start a fresh business. It was further held that the building, being an old tiled building, was not suitable for accommodating a modern business concern. Another reason given was that the son for whom the building was required was not examined

as a witness.

The High Court while setting aside the above-said findings came to the conclusion that if the view taken by the courts below was to be accepted, then no person living outside Kerala would come back to Kerala and get back his building even on the ground of personal necessity. The High Court took judicial notice of the fact that persons go outside in the pursuit of their profession and come back after the retirement or for some other purposes or for that of their children. That in the present case, the husband of the respondent was in service of Railways had died and after his death, respondent thought it proper for her son to come back to his native place and start a business where a building was available. That simply because a person was away for number of years is no ground to deprive him/her from getting back the building on the ground of personal necessity. Mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions, [this fact is acknowledged by the first appellate court also], it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case.

Counsel for the appellant has contended that the respondent-landlady had sold one building two years prior to the examination of the respondent in court. Sale of such a building demonstrated that the need was not bona fide. Had the need been bona fide then the respondent would not have sold the building of which vacant possession was available. We do not find any substance in this submission. The

building had been sold two years prior to the examination of the respondent.

Admittedly, on the date of filing the eviction petition, the building was not available to start the business. It has not come on record that the said building was suitable for starting the business. In the absence of any such evidence, it cannot be concluded that the personal necessity pleaded by the respondent was not bona fide. We do not find any infirmity in the findings recorded by the High Court.

During the pendency of the appeal, an application was filed by the real sister and brother's son of the appellant to take them on record as legal representatives as the appellant had died leaving no children. Along with the said application the proposed legal representatives had produced the original will. They were brought on record by this Court's order dated 1st September, 2003 as legal representatives subject to all just exceptions. Office is directed to send back the original will along with the records.

For the reasons stated above, the appeal is dismissed with no order as to costs.

.....J.

.....
[ASHOK BHAN]

NEW DELHI;
.....J.

.....
[ALTAMAS KABIR]

OCTOBER 06, 2005.